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| In re Application of | : | |
| HARBIGE, et al. | : | |
| U.S. Application No.: 10/555,757 | : | DECISION ON PETITION |
| PCT No.: PCT/GB04/02089 | : | |
| Int. Filing Date: 14 May 2004 | : | UNDER 37 CFR 1.47(a) |
| Priority Date: 14 May 2003 | : | |
| Attorney Docket No.: 604-756 | : | |
| For: USE OF TRIGLYCERIDE OILS CONTAINING | : | |
| GAMMA-LINOLENIC ACID RESIDUES AND | : | |
| LINOLEIC ACID RESIDUES FOR THE TREAT- | : | |
| MENT OF NEURODEGENERATIVE DISEASE | : | |

This decision is in response to the applicant's "RULE 47 PETITION" filed 22 February 2007 in the United States Patent and Trademark Office (USPTO) to accept the application without the signature of joint inventor Mohammed Sharief.

BACKGROUND

On 14 May 2004, applicant filed international application PCT/GB04/02089 which claimed priority to an earlier application filed 14 May 2003. A copy of the International Application was forwarded to the United States Patent and Trademark Office (USPTO) from the International Bureau (IB) on 25 November 2004. The thirty-month period for paying the basic national fee in the United States expired at midnight on 14 November 2005.

On 07 November 2005, applicant filed a transmittal letter for entry into the national stage in the United States which was accompanied by the requisite basic national fee, an Information Disclosure Statement and a first preliminary amendment.

On 22 November 2006, applicant was mailed a "NOTIFICATION OF MISSING REQUIREMENTS UNDER 35 U.S.C. 371" (Form PCT/DO/EO/905) informing applicant of the need to provide an oath or declaration of the inventors, in compliance with 37 CFR 1.497(a) and (b), identifying the application by the international application number and international filing date. Applicant was afforded two months to file the proper reply and informed that this period could be extended pursuant to 37 CFR 1.136(a).

On 22 February 2007, applicant filed the present petition under 37 CFR 1.47 accompanied by a petition for a one-month extension of time and payment of the appropriate extension of time fee. As such, the response is considered timely filed. It is noted that applicant

provided a petition fee payment of \$130.00. The petition fee for a petition under 37 CFR 1.47 is \$200.00 as detailed in 37 CFR 1.17(g). The additional \$70.00 will be charged to deposit account number 14-1140 as authorized.

DISCUSSION

A petition under 37 CFR 1.47(a) must be accompanied by (1) the fee under 37 CFR 1.17(g), (2) factual proof that the missing joint investor refuses to execute the application or cannot be reached after diligent effort, (3) a statement of the last known address of the missing inventor, and (4) an oath or declaration by each 37 CFR 1.47(a) applicant on his or her own behalf and on behalf of the non-signing joint inventor. Applicant has satisfied items (1), (3) and (4) above.

Regarding item (2), Section 409.03(d) of the Manual of Patent Examining Procedure (MPEP) states, in part:

Before a refusal can be alleged, it must be demonstrated that a *bona fide* attempt was made to present a copy of the application papers (specification, including claims, drawings, and oath or declaration) to the non-signing inventor for signature."

Applicant has provided a firsthand statement from Erika Szedon detailing a meeting with the non-signing inventor, Dr. Sharief. However, the statement does not provide sufficient detail to satisfy item (2) above. It is unclear from the statement and documentation whether a copy of the application papers was presented to Dr. Sharief. It appears that he was merely presented with declaration and assignment documents for execution. As shown above, a complete set of application papers must be presented to the inventor prior to his refusal to assure that the inventor understands to which invention the declaration is directed.

In addition, it appears from the statement that Dr. Sharief has retained counsel to advise him on the matter. Ms. Szedon states that, "[h]is response, as communicated by his solicitor, was that he was not going to sign the documents at this time and that he was seeking independent legal advice before signing the documents." If this information was communicated orally to Ms. Szedon details of the conversation should be provided as to the date and time and the name of the attorney. See MPEP 409.03(d):

When there is an express oral refusal, that fact along with the time and place of the refusal must be stated in the statement of facts. When there is an express written refusal, a copy of the document evidencing that refusal must be made part of the statement of facts.

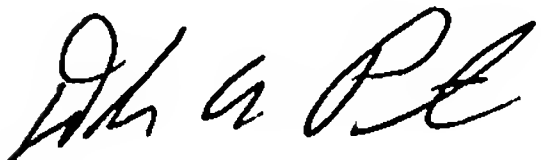
In light of the above it is not possible to grant applicant's petition under 37 CFR 1.47(a) at this time.

CONCLUSION

For the reasons stated above, applicant's petition under 37 CFR 1.47(a) is **DISMISSED** **without prejudice**.

Any reconsideration on the merits of this petition must be filed within **TWO (2) MONTHS** from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.47(a)." Extensions of time may be obtained under 37 CFR 1.136(a).

Any further correspondence with respect to this matter should be directed to Mail Stop PCT, Commissioner for Patents, Office of PCT Legal Administration, P.O. Box 1450, Alexandria, Virginia 22313-1450, with the contents of the letter marked to the attention of the Office of PCT Legal Administration.



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